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JUL 12 2006

REMARKS

Applicants respectfully request reconsideration and further examination of the present application.

A. Status of the Claims

In this Amendment A, claims 1, 4, 5, 12, 14, 18-20, 22-25, 33, 35 and 39-41 have been amended to more particularly claim certain embodiments, while claims 5, 8, 11, 13, 26, 29, 32 and 34 have been canceled. More specifically, claims 1, 14, 18-20, 22, 35 and 39-41 have been amended to indicate that the percentages referenced therein are weight percents. Support for these amendments may be found in the specification, for example, in paragraphs [0056] and [0058]. Additionally, claims 4, 12, 25 and 33 have been amended to include details relating to the surfactant formula referenced therein. Support for these amendments may be found, for example, in now canceled claims 5, 13, 26 and 34, as well as in the specification in, for example, paragraph [0047]. Finally, claims 4, 5, 22 and 23 have been amended to include the structures of Compound I and Compound II referenced therein. Support for these amendments may be found in the specification in, for example, paragraphs [0017] to [0019], as well as in Figures 1A and 1B.

Claims 43 and 44 have also been added. Support for these claims may be found, for example, in claims 1 and 22, respectively.

Accordingly, claims 1-4, 6, 7, 9, 10, 12, 14-25, 27, 28, 30, 31, 33 and 35-44 are now pending.

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B. Rejections Under 35 U.S.C. §112, Second Paragraph

Reconsideration is respectfully requested of the rejection of now pending claims 1-4, 6, 7, 9, 10, 12, 14-25, 27, 28, 30, 31, 33 and 35-42 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter Applicants regard as the invention.

1. Percentage Basis

Reconsideration is respectfully requested of the rejection of claims 1, 14, 18-20, 22, 35 and 39-41, because these claims do not specify the basis for the percentages recited therein.

As noted above, these claims have been amended to indicate that the percentage numbers recited therein are weight percent numbers. Support for these amendments may be found in the specification, for example, in paragraphs [0056] and [0058].

Applicants respectfully submit the amendment of these claims effectively renders the present rejection moot. Withdrawal of the present rejection is therefore requested.

2. Surfactant Formula "Y SO_x"

Reconsideration is respectfully requested of the rejection of claims 4, 12, 25 and 33 for failing to define a range for the coefficient "x".

As noted above, these claims have been amended to include additional details relating to the surfactant formula Y SO_x, including a range for the coefficient x. Support for these amendments may be found, for example, in now canceled claims 5,

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13, 26 and 34. Support may also be found in the specification, for example, in paragraph [0047].

Applicants respectfully submit the amendment of these claims effectively renders the present rejection moot. Withdrawal of the present rejection is therefore requested.

3. Use of "Mode" in Claims 14 and 35

The Office appears to have rejected claims 14 and 35 for being indefinite, in view of the use of the word "mode" therein. Specifically, the Office states:

Claims 14 and 35 . . . recite a size range distribution with a mode. Since a mode is a most frequent number in a range, and not an average, the end points of the distribution cannot be determined, since the average is not determined.

Applicants agree that, in this context, the "mode" of a distribution of particles is understood to refer to the particle size number that appears most frequently within the distribution of a number of particles sizes. Applicants respectfully disagree, however, that claims 14 and 35 are indefinite due to the way in which the word "mode" is used therein. Accordingly, reconsideration of this rejection is respectfully requested.

Under M.P.E.P. §2171, a rejection under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regards as the invention, is an objective one, as it is not dependent on the views of the Applicants or any particular individual, but is evaluated in the context of whether the claim is **definite**. Additionally, under M.P.E.P. §2173.02, the definiteness of claim language must be analyzed, not in a vacuum, but in light of: (1) the content of the particular application disclosure; (2) the teachings of the prior art; and (3) the claim

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interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.

Claims 14 and 35 both reference a metal alloy powder that comprises zinc particles. These claims require that at least 70 weight% of these zinc particles have a particle size within a 100 micron size range distribution. Furthermore, within this 100 micron particle size distribution range, there is a mode between about 100 and about 300 microns. Accordingly, each of these claims requires, with respect to the referenced "at least 70 weight%" portion of the zinc particles, that the most frequently occurring particle size falls within the range of 100 to 300 microns. Due to the 100 micron particle size distribution requirement, these claims thus further require that the remaining particles in this "at least 70 weight%" portion, at most, fall within a 100 micron range that encompasses this mode. For example, if the mode is 125 microns, the remaining particles in this "at least 70 weight%" portion may fall within a range of (i) 25 to 125 microns, (ii) 125 to 225 microns, or (iii) 75 to 175 microns. Accordingly, while the particle size range for this "at least 70 weight%" portion is not permanently fixed, these two requirements, taken together, are easily understood by one possessing the ordinary level of skill in the pertinent art to define a distribution that can be determined.

In view of the foregoing, Applicants respectfully submit that claims 14 and 35 are not indefinite. Applicants therefore request reconsideration of this rejection.

4. Trademark/Trade Names

In as much as all claims containing surfactant trademark/trade names have been deleted, Applicants respectfully submit the rejection related thereto is rendered moot.

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C. Rejections Under 35 U.S.C. §103

Reconsideration is respectfully requested of the rejection of now pending claims 14-20 and 35-42 under 35 U.S.C. §103 as being unpatentable over Goldstein et al. (U.S. Patent No. 5,419,987) in view of Christian et al. (U.S. Patent No. 6,991,875).

As set forth in M.P.E.P. §2143, in order for the Office to establish a *prima facie* case of obviousness, three basic criteria must be met: (1) the prior art references, when combined, must teach each and every element of the claim; (2) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine or modify the references; and (3) there must be some reasonable expectation of success. Applicants respectfully submit that the Office has failed to meet its burden here because, at a minimum, the prior art references, when combined, fail to teach each and every element of either claim 14, from which claims 15-20 depend, or claim 35, from which claims 36-42 depend.

Claim 14 is directed to a gelled anode mixture comprising, in relevant part, a metal alloy powder. The metal alloy powder comprises zinc particles, wherein at least 70 weight% of these particles has a particle size within a 100 micron size range distribution. Furthermore, this particle size distribution has a mode between about 100 and about 300 microns.

Claim 35 is directed to an alkaline electrochemical cell that comprises, in relevant part, a gelled anode that comprises a metal alloy powder. The metal alloy powder comprises zinc particles, wherein at least 70 weight% of these particles has a particle size within a 100 micron size range distribution. Furthermore, this particle size distribution has a mode between about 100 and about 300 microns.

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In contrast to claims 14 and 35, neither Goldstein et al. nor Christian et al. disclose or suggest a gelled anode, alone or as part of an electrochemical cell, that comprises zinc particles, wherein at least 70 weight% of those zinc particles have a particle size within a 100 micron range distribution, and wherein this distribution of particles has a mode between about 100 and about 300 microns. In fact, the Office has already noted that Goldstein et al. provide only a general reference to particle size, stating that the particle size can be chosen over a range from 5 to 1000 microns. (See the present Office action at page 3, second full paragraph, and Goldstein et al. at column 3, lines 35-38). Although Christian et al. do reference zinc-based particles having multi-modal particle size distributions (see, e.g., column 4, lines 5-31), they do not disclose or suggest the limitations recited in either claim 14 or claim 35. Rather, Christian et al. simply state:

For zinc-based particles in a mode having an average particle size of between about 95 microns and 105 microns, . . . at least 75 volume percent of the zinc-based particles can have a particle size between about 25 microns and 140 microns.

Accordingly, it is to be noted Christian et al. make no reference to a gelled anode, alone or as part of an electrochemical cell, wherein at least 70 weight% of the zinc particles therein meet the particle size distribution and mode requirements recited in claim 14 or claim 35. Rather, Christian et al. effectively state only that, for what ever amount of zinc particles that are present that have a mode between about 95 and 105 microns, at least 75 volume% of these particles have a particle size between about 25 and 140 microns.

In view of the foregoing, Applicants respectfully submit the Office has failed to establish a *prima facie* case of obviousness, because the combination of Goldstein et al. with Christian et al. fail to disclose or suggest a gelled anode, alone or as part of an electrochemical cell, that comprises at least 70 weight% of zinc particles that satisfy the

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recited particle size range and mode requirements. Accordingly, reconsideration of the rejection of claims 14 and 35 is respectfully requested.

Inasmuch as claims 15-20 and 36-42 depend directly or indirectly from claim 14 or 35, respectively, these claims are submitted as patentable over the cited combination of references for at least the same reasons as those noted for claims 14 and 35, respectively. Although these dependent claims may include additional patentable features, these features will not be addressed at this time in the interest of brevity.

D. Allowable Subject Matter

Applicants respectfully acknowledge the Office's finding that claims 1-4, 6, 7, 9, 10, 12, 21-25, 27, 28, 30, 31 and 33 would be allowable if rewritten or amended to overcome the rejections under 35 U.S.C. §112, second paragraph. Inasmuch as Applicants believe these amendments have been made, allowance of these claims is respectfully requested.

Applicants also respectfully submit that new claims 43 and 44 should be allowed, as well, in view of (i) the requirement in these claims that the anode comprise an amphoteric surfactant, and (ii) the Office's conclusion that the prior art does not disclose an anode that includes a metal alloy powder, a gelling agent, an electrolyte with less than 40 weight% hydroxide, and an amphoteric surfactant.

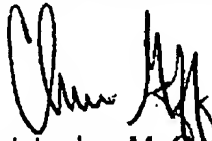
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CONCLUSION

In view of the foregoing, favorable reconsideration and allowance of all pending claims are respectfully requested.

The Commissioner is hereby authorized to charge any fee deficiency in connection with this Amendment A (including payment of the fee of \$120.00 for a one month extension of time) to Deposit Account Number 19-1345 in the name of Senniger, Powers, Leavitt & Roedel.

Respectfully submitted,



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